DAVIS v. VANDECKER.

Costs.—Trespass.

Where the title to land is in issue upon the record, the plaintiff is entitled to full costs, although he has obtained a verdict of less than $8, and the judge at the trial has not certified for full costs.

[Sept. 11.—WILSON, J.]

This was a motion to review a taxation. The action was for trespass, the verdict being for the plaintiff for one shilling The judge at the trial had not certified for full costs. The plea of not possessed was on the record. Under these circumstances the Clerk of the Common Pleas refused to tax to the plaintiff any costs.

Mr. Read (Read & Keeler) for the defendant contended that 31 Vict. cap. 24, sec. 1, was express, and the certificate was necessary in order to enable the plaintiff to tax any costs.

Holman, for plaintiff, contended that the title to land was raised by the pleadings, and that, therefore, the plaintiff was entitled to full costs: *Williams* v. *Jones*, 15 W. R. 133 *Lake* v. *Briley*, 5 U.C. Q.B. 307; *Humberston* v. *Henderson*, 3 Prac. R. 40.

WILSON, J.—I think the plaintiff is entitled to full costs.

HUMPHRIES v. RAMSAY.

Security for costs- Insolvent—Action by.

Held, that under sec. 39, Insolvent Act of 1875, an insolvent is bound to give security for costs in an action for a personal wrong.

[October 3.—WILSON, J.]

This was an application for security for costs in an action by an insolvent for malicious prosecution.

S. M. Jarvis shewed cause. Sec. 39 of the Act of 1875 applies to causes of action which pass to the assignee. The whole section should be read together: *Smith* v. *Commercial Union Insurance Co.*, 33 U.C. Q.B. 529. This cause of action does not pass to the assignee; *White* v. *Elliott*, 30 U.C. Q.B. 253.

D. E. Thomson contra. The language of the section is imperative and applies to every action of what nature soever. If the insolvent were suing for a cause of action which passed to the assignee, he would be ordered to give security for costs irrespective of this provision: *Perkins* v. *Adcock*, 15 L. J. Ex. 7; *Elliott* v. *Kendrick*, 12 A. & E, 597; *Solomon* v. *Leek*, 9 Dowl. 361. *Smith* v. *Commercial Union* was decided on the English cases; sec. 42 of the Act of 1869 was not referred to. The only case in point is *Lee* v. *Moffatt*, 6 Prac. R. 284.

WILSON, J.—In *Smith* v. *Commercial Union* the Court did not notice the provision as to security for costs in the Insolvent Act of 1869, sec. 42. That provision is continued in the Act of 1875, sec. 39, and it is that, in allac - tions and suits of any "nature or kind whatsoever" brought by the insolvent before his discharge, he shall be required to give security for costs. If that provision had been before the Court in the case I have mentioned, it is not probable the decision would have been as it is. Since then, in the case of *Lee* v. *Moffatt*, *ante*, the Chancellor has decided, under the Act of 1875, that the insolvent must give security for costs in any suit he brings. I think that cannot have been what was meant by the Legislature, although they have enacted it because it. restrains the insolvent suing in cases in which the assignee has no interest. If the assignee employed the insolvent to help in winding up the estate, the insolvent could not sue for his wages unless he gave security for costs, which he might not be able to do. So if the insolvent had a cause of action purely personal—I mean one which did not pass to the assignee—against a municipal corporation, which would have to be sued for within three months, he might forfeit his claim if not able to give the security within the three months, which would benefit nobody but the corporation, which was a wrong doer. So he might be prevented from suing as an executor.

With every desire to assist the plaintiff, I find the enactment too plain and too strong to be got over. The security is to be *such* security as the Court shall direct; perhaps I can, under the circumstances, make it easier than it usually is. The order must go, costs to be costs in the cause.

Order accordingly.

CHANCERY CHAMBERS.

CARLEY v. CARLEY.

Alimony. — Witness Fees.— Counsel Fees.— Costs.— Solicitor, payment of costs by

[Sept. 17.—MR. STEPHENS.]

This was an application in an alimony suit for an order for payment of witness fees and counsel fees by the defendant to the plaintiff, in order to enable her to go to a hearing. There was not the usual provision for disbursements in the order for interim alimony.

H. Cassels, for defendant, asked that the motion be dismissed with costs, to be paid by